

Serial: **180224**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2012-M-01471-SCT

***THE BOARD OF TRUSTEES, DELTA
REGIONAL MEDICAL CENTER, DISTRICT
OF WASHINGTON COUNTY, MISSISSIPPI***

Petitioner

v.

***WILLIE B. TAYLOR, AS
ADMINISTRATRIX OF THE ESTATE OF
LEKENRAY TAYLOR, DECEASED***

Respondent

ORDER

This matter is before the Court en banc on the Petition for Interlocutory Appeal and for Stay of the Trial Court Action filed by the Board of Trustees, Delta Regional Medical Center, District of Washington County, Mississippi. Also before the Court is the Response in Opposition filed by Willie B. Taylor, as administratrix of the Estate of LeKenray Taylor, deceased. After due consideration, the Court finds that the petition and request for stay should be denied.

IT IS THEREFORE ORDERED that the Petition for Interlocutory Appeal and for Stay of the Trial Court Action filed by the Board of Trustees, Delta Regional Medical Center, District of Washington County, Mississippi, is hereby denied.

SO ORDERED, this the 4th day of December, 2012.

/s/ Jess H. Dickinson

JESS H. DICKINSON, PRESIDING JUSTICE
FOR THE COURT

TO DENY: WALLER, C.J., CARLSON AND DICKINSON, P.JJ., RANDOLPH, LAMAR AND KITCHENS, JJ.

CHANDLER, J., OBJECTS TO THE ORDER WITH SEPARATE WRITTEN STATEMENT.

NOT PARTICIPATING: PIERCE AND KING, JJ.

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**CHANDLER, JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE
WRITTEN STATEMENT:**

¶1. I would grant the petition for an interlocutory appeal. Delta Regional Medical Center's decision not to have a thoracic surgeon on call clearly was subject to discretionary-function immunity. Mississippi Code Section 11-46-9(1)(g) provides:

(1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:

...

(g) Arising out of the exercise of discretion in determining whether or not to seek or provide the resources necessary for the purchase of equipment, the construction or maintenance of facilities, the hiring of personnel and, in general, the provision of adequate governmental services;

.....

Miss. Code Ann. § 11-46-9(1)(g) (Rev. 2012). The decision not to have a thoracic surgeon on call was subject to discretionary-function immunity because it involved an element of choice or judgment, and that choice or judgment involved social, economic, or political-policy considerations. See *Pratt v. Gulfport-Biloxi Reg'l Airport Authority*, 97 So. 2d 68,

72 (Miss. 2012). Because Delta Regional Medical Center's conduct was subject to immunity, I would reverse the trial court's order denying the motion for summary judgment and render a judgment for Delta Regional Medical Center.